IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2006

C O R A M

THE HONOURABLE MR.JUSTICE M.E.N.PATRUDU

W.P.No.16072 Of 1996

Ashok Seshadri ... Petitioner

Vs

1. The Board of Directors,
   The Hindustan Photo Films Manufacturing Co. Ltd.,
   Indunagar, Ootacamund 643 005.

2. The Chairman,
   The Hindustan Photo Films Manufacturing Co. Ltd.,
   Indunagar, Ootacamund 643 005.

3. The Managing Director,
   The Hindustan Photo Films Manufacturing Co. Ltd.,
   Indunagar, Ootacamund 643 005. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records relating to the order of dismissal dated 13.7.1996 in Ref.A1/207-BM/96 of the first respondent confirming the order dated 28.12.1995 in ref.P1/4/2372 passed by the 2nd respondent and quash the same.

For petitioner : Mr.Prakash Goklaney
For respondents : Mr.M.Vijayan for M/S.King and Partridge for RR1 to 3

ORDER

The petitioner was employed as Senior Manager (Marketing Co-ordination), Head Office of the Hindustan Photo Films Manufacturing Company Limited at Ootacamund in June 1975 and worked in various capacities. While so, he was subjected to disciplinary action through the charge sheet dated 22.4.1994 on an allegation that while he was working as Purchasing Manager in the Purchase Division he had indulged in acts of misconducts. Altogether 6 charges are framed against him. He gave explanation denying all the charges.

2. In the mean while, on 3.2.1995 he had submitted his resignation on personal reasons. The same was rejected by the Management through their letter dated 7.2.1995, for administrative reasons. Thereafter, on 17.2.1995

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he received a communication that enquiry has been initiated against him and several other persons. Enquiry was conducted. The proceedings of the enquiry reveal that the petitioner submitted a detailed defence statement, so also the prosecution. The Enquiry Officer submitted his report on 14.7.1995 holding him guilty and the Management has accepted the same and issued a show cause notice proposing the punishment of dismissal. He sent a reply setting out the reasons that the findings of the Enquiry Officer are perversive. He was reiterated his request for resignation and the same was not accepted. Finally orders of punishment of dismissal was imposed and the petitioner was dismissed from service with effect from 28.12.1995. He filed an appeal and the same was dismissed. Therefore, the petitioner is questioning the legality and correctness of the impugned order of the first respondent the Appellate Authority for dismissing his appeal without giving any reasons. The petitioner is also challenging the findings of the enquiry.

3. On behalf of the petitioner, it is contended that the Disciplinary Authority and the Appellate Authority is one and the same person therefore, the impugned order is liable to be set aside. It is next contended that the impugned order is not a speaking order and reasons are not assigned. It is contended that the procedure adopted by the Enquiry Officer is illegal as he insisted for additional documents and relied on these. It is stated that there was no witness to substantiate the documents and to prove the linkages between the documents and allegation and the Enquiry Officer has deliberately overlooked the fact. It is stated that there is a bias for the Enquiry Officer in favour of the Management. Sum and substance of the contentions of the petitioner is that he has not indulged in any misconduct and he is not directly or indirectly involved for any those allegations and there is no financial loss to the company in any event, and the enquiry is not properly held and the Enquiry Officer is a biased person and he has not followed the principles of natural justice and perverse findings are given by him and on the erroneous report, the Disciplinary Authority imposed the penalty and the same person has decided his appeal. Therefore, the impugned order is liable to be set aside.

4. Heard arguments of both sides.

5. The point for determination is whether the impugned order of dismissal is to be set aside?

6. In the instant case, the petitioner had been exonerated in respect of the imputations 4.1 (a), 4.1 (c) and 4.1 (e). The petitioner is not found guilty on those 3 charges while the petitioner was held guilty for other three charges under 4.1 (b) and 4.1 (d) and 4(2).

7. 4.1 (b) of the charge is that the petitioner has signed the purchase order dated 4.11.89 in the month of December 1991 without any authority or justification.

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8. The Enquiry Officer discussed this charge in paragraph No.3.2 at page No.264 of the material paper.

9. In this case, the petitioner has sent a reply on 31.5.1994 admitting that he has signed the purchase order dated 4.11.89 in December 1991 as the Chief Manager -Purchase and sent the purchase order 96091/C/1767 dated 4.11.89. He has further stated that he signed in order to facilitate the clearance at Customs, after shipment and arrival of the consignment at Bombay and it is to prevent demurrages and other accruing costs.

10. Thus, there is a clear admission by the petitioner with regard to this charge. He admitted that he has sent the purchase order dated 4.11.89 in December 1991.

11. In the considered opinion of the Court, it is the malfunction of the Office. The petitioner was holding the Office of the Manager of the purchase department and indulged in illegal activities and it is nothing but a misconduct. Why he has done, and at whose instance he did the same is irrelevant. So also it is illuminated whether this act is done in the interest of the establishment. This is an absurd defence. Admittedly, he has indulged in misconduct and it is nothing but violation of law.

12. Therefore, the Enquiry Officer after considering the charge and the admission and the defence statement of the petitioner, gave a finding at paragraph No.3(2)(5) at page No.265. It discloses that the Board approved in its 168th meeting held on 19.6.1989 to import one Video testing equipment for Rs.26.0 lakhs and Video measuring instrument for Rs.12.4 lakhs and other magnetic measuring instruments for Rs.26.0 lakhs.

13. The purchase order 96091/C.1767 dated 4.11.89 and it was issued for Video Response Generator 1 No. And Video Test Signal tester -1 No both at FOB DM 4,00,000.

14. While so, what was actually sent by the supplier are: High speed press with Vat, Sand Mill for manufacture of Magnetic Tape, 152 mm slitter with Slitting head box and Video Loaders-2 Nos.

15. The Enquiry Officer noticed after verifying all the documents that the first page of the purchase order has been replaced to indicate the items actually despatched by the supplier, while the original copies of the purchase orders continued to rest with the departments in the company and the corrected copy was given only to the customs department for customs clearance. The Enquiry Officer found a clear case that the items actually received or not the items originally decided to purchase and the purchase order contained different items.

16. The findings of the Enquiry Officer are based on the documents discloses that the items which are approved by the Board for Rs.64.4 lakhs

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are only small value items costing approximately Rs.50,000/-. Thus, it is clear that the Board approval was obtained for some items but different items were imported by manipulating the purchase orders first page, asking to release the amount with wrong particulars and getting customs clearance by giving a revised purchase order copies and the petitioner has signed the purchase order with an intention not to distribute the copies to other departments concerned and that itself shows that the petitioner is fully aware that he is indulging in an act which is not permissible under law. It is clearly held that the petitioner has violated the Customs and Import Licence Procedures.

17. With regard to imputations of 4.2 that he has signed the back dated proposal without verifying is also proved. In this case the petitioner has conceded that the proposal was back dated.

18. Having observed the same, the Enquiry Officer found that the charge at 4.1(b), 4.1(d) and 4.2 are proved whereas, 4.1(a), 4.1(c) and 4.1 (e) are not proved. I did not notice any defect in the findings.

19. If the Enquiry Officer is a biased person. He would have held the petitioner guilty for all the charges, he has not done so. The charges of 4.1(b) and 4.1(d) are proved because the petitioner himself has admitted that he had signed the back dated purchase order. He has taken a plea that it is only for the benefit of the company. Even then nothing more to be required to conclude that the petitioner has indulged in the misconduct.

20. Therefore, I do not find any merit in the arguments of the counsel for the petitioner on any of the above aspects. The petitioner has participated in the enquiry, filed documents, filed explanations, filed defence statement contested the case. In such circumstances, I do not find any merit in the argument that principles of natural justice are not followed.

21. On behalf of the respondents, it is contended that as per the Conduct, Discipline and Appeal Rules of the respondent Corporation, it is true that the Managing Director is the Disciplinary Authority but it should be noted at the relevant period of proposing the penalty the post of Managing Director is vacant. Therefore, the second respondent is in full additional charge of the post and in that capacity of Managing Director the punishment was proposed.

22. At page Nos.285 and 286 of the material papers, I found the dismissal order and it is dated 28.12.95 and after signing, it is mentioned that the order is passed by the Disciplinary Authority. While so, on 13.7.1996 the Appellate Authority has dismissed the order impugned and the impugned order is signed by the Secretary of the Company and it discloses that the Board of Directors of the Company at their meeting held on 30.5.1996 considered the appeal of the petitioner and felt that there was no need for changing the decision of the Disciplinary Authority.

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23. Therefore, the contention of the petitioner is that the Disciplinary Authority and the Appellate Authority is one and the same are not correct. It is the Chairman of the company who has passed the dismissal order and the same was confirmed by the Board of Directors.

24. Rule 23 of the Conduct, Discipline and Appeal Rules for Officers/Section Officers/ Sales Officers 1977, in the schedule for the Managers are discussing that the appointing Authority is the Managing Director and the Disciplinary Authority/Competent Authority is the Managing Director, while so the Appellate Authority is the Board of Directors.

25. The contention of the petitioner is that while the Managing Director is the appointing Authority and the Disciplinary Authority, the Chairman ought not to have issued the dismissal order dated 28.12.1995.

26. When it is specifically stated that the post of Managing Director was vacant at the relevant time and the Chairman is holding the said post as an additional charge, there is nothing illegality in issuing the dismissal order by holding the said post as additional charge. Further, he has not confirmed the appeal. The Board has confirmed the appeal. Even he has taken part in the deliberations of the Board being the Chairman that will not make the Court to quash the order.

27. Therefore, I do not find any grounds to interfere with the findings of the Enquiry Officer and the concerned authorities both the Disciplinary Authority and the Appellate Authority has rightly accepted the findings of the Enquiry officer and imposed the punishment.

The writ petition is dismissed. No costs.

sgl

Sd/-
Asst. Registrar

//true copy//

Sub Asst.Registrar

To

1.The Board of Directors,The Hindustan Photo Films Manufacturing Co. Ltd.,Indunagar, Ootacamund 643 005.

2.The Chairman, The Hindustan Photo Films Manufacturing Co.Ltd.,Indunagar, Ootacamund-05.

3.The Managing Director, The Hindustan Photo Films Manufacturing Co. Ltd., Indunagar, Ootacamund 643 005.

+ one cc to M/S.King and Partridge, Advocate Sr.No.42327.
+ one cc to Mr.Prakash Goklaney, Advocate Sr.No.42520.

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